

**Draft Minutes
Regular Meeting
Commission on Local Government
10:00 a.m., September 13, 2010
The Virginia Housing Center
Henrico Room 2
4224 Cox Road
Glen Allen, Virginia**

Members Present

Harold H. Bannister, Jr., Chairman
Wanda C. Wingo, Vice-Chairman
Vola T. Lawson
Kathleen K. Seefeldt

Members Absent

Cole Hendrix

Staff Present

Susan Williams, Local Government Policy Manager
Zachary Robbins, Senior Policy Analyst
Steve Ziony, Principal Economist

Call to Order

Commission Chairman Harold H. Bannister, Jr., called the meeting to order at 10:12 a.m. on September 13, 2010 in Henrico Room 2 at the Virginia Housing Center in Glen Allen, Virginia.

I. Town of Hillsville – Carroll County Voluntary Settlement Agreement

A. Preliminary Staff Comment

Ms. Williams made preliminary comments regarding the proposed Voluntary Settlement Agreement between the Town of Hillsville and Carroll County. She explained that, on September 9, 2010, the Commission received a submission requesting that the Commission review and issue findings on the proposed agreement. She indicated that the agreement was negotiated pursuant to Va. Code § 15.2-3400 and that the filing

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included Notice by the Town of Hillsville of a voluntary settlement agreement and a copy of the proposed agreement as well as data and exhibits supporting the agreement.

Ms. Williams stated that the submission also included resolutions adopted by the Hillsville Town Council and the Carroll County Board of Supervisors requesting the Commission to review the agreement. The resolutions stated the intention of the governing bodies to adopt the agreement subsequent to the Commission's review and designated the contact person(s) in each locality for communications with the Commission regarding the review of the agreement: Carter Glass and Joshua Heslinga with Troutman Sanders (Town) and James Cornwell with Sands Anderson (County). Indication that copies of the Notice, the proposed VSA and an index of data and exhibits were mailed to each of the local governments contiguous to or sharing functions, revenue or tax sources with the Town of Hillsville and the County of Carroll was also included in the filing.

Ms. Williams indicated that, on the same day the submission was received, Commission staff sent a letter to the parties acknowledging its receipt and reminding them that the next regular Commission meeting was scheduled for 10:00 a.m., September 13 in Richmond. In that letter, staff requested that both the County and Town be present at the meeting to assist the Commission with this matter and informed the parties of the tentative schedule of meetings in Hillsville that was discussed at the Commission's July meeting.

Ms. Williams said that Commission staff will be carefully reviewing the submission and, if necessary, preparing a written request for additional information from the parties. She then provided a brief overview of the authority, standard of review and

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timeframe associated with the Commission's review of proposed voluntary settlement agreements.

B. Comments by Representatives of the Parties

Next, Mr. Bannister called on representatives of the Town and County to make their remarks. Carter Glass appeared at the meeting on behalf of the Town of Hillsville and Ann-Neil Cosby represented Carroll County. Mr. Glass provided an overview of the circumstances and events leading up to the negotiation of the proposed agreement. Mrs. Seefeldt commented on the lengthy 40-year waiver of annexation rights contained in the proposed agreement, and Mr. Glass explained that it is longer than the Town would have liked but that it reflected a compromise with the County. He further indicated that Hillsville has significant vacant land but needs to expand its boundaries to include land where development is occurring. Mr. Bannister asked for an explanation of the language in section 4.4 of the proposed agreement dealing with the periodic renegotiation of the revenue sharing provisions contained in the agreement, which Mr. Glass provided. Mr. Bannister asked what revenues are currently being shared by the Town and County, and Mr. Carter responded that meals and lodging taxes are being shared on a 50/50 basis. Mr. Bannister asked the parties to be prepared to describe the impact the proposed agreement would have on any other agreements currently in effect.

C. Commission Deliberation and Action

With input from the parties and after a brief discussion, the members approved the following tentative review schedule:

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Filing of Notice – September 8, 2010

Request for additional information – Friday, October 8, 2010 at close of business

Parties' response to request for additional information / supplemental submissions by parties – Friday, November 5, 2010 at close of business

Commission Meeting (Regular) – Monday, November 15, 2010 at 3:00 PM in Hillsville

Public Hearing – Monday, November 15, 2010 at 7:00 PM in Hillsville

Tour of affected area – Tuesday, November 16, 2010 at 9:00 AM in Hillsville

Oral Presentations – Tuesday, November 16, 2010 at 10:30 AM in Hillsville

Commission Meeting (Special) – Tuesday, November 16, 2010 at 12:00 Noon in Hillsville

Closing of Record – Tuesday, November 30, 2010 at close of business

Draft report – January, 10, 2011 (presented at regular Commission meeting tentatively scheduled for 10:00 AM in Richmond.

II. Administration

A. Approval of Minutes of July 12, 2010 Regular Meeting

Mrs. Lawson made a motion that the minutes of the Commission's regular meeting of July 12, 2010 be approved. Such motion was seconded by Mrs. Wingo, and the Commission unanimously approved the minutes without amendment.

B. Public Comment Period

The Chairman opened the floor to receive comments from the public. No person appeared to testify before the Commission during the public comment period.

C. Presentation of Financial Statement for August 2010

Referencing an internally produced financial statement that encompassed expenditures through the end of August 2010, Ms. Williams stated that the financial report covered the first two months of Fiscal Year 2011 (FY11) and that Commission personnel and non-personnel expenditures for that period represented 20.61% of the total amount budgeted for the fiscal year.

D. Local Government Policy Manager's Report

1. Potential Issues

Ms. Williams provided a brief update concerning potential interlocal issues involving the City of Covington – Alleghany County; Town of Culpeper – Culpeper County; City of Bedford – Bedford County; Community of Massanutten – Rockingham County); Town of Clarksville – Mecklenburg County; Town of Pulaski – Pulaski County; Town of Appomattox – Appomattox County; Town of Middletown – Frederick County; Town of Cheriton – Town of Cape Charles – Northampton County; and Town of Front Royal – Warren County. Ms. Williams indicated that Commission staff recently made an on-site technical assistance visit to the Town of Clarksville focusing on the annexation process as well as a presentation on the town incorporation process to a Massanutten Community Meeting. She directed members' attention to numerous newspaper articles concerning these and other local government issues that were included in their agenda packages. Ms. Williams indicated that, in addition to the Town of Hillsville – Carroll County Voluntary Settlement Agreement submitted for review by the Commission on September 9, the Commission can reasonably anticipate in the near future the filing of actions involving the proposed consolidation of the City of Covington and Alleghany

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County into the City of Alleghany Highlands as well as a Town of Culpeper – Culpeper County Voluntary Settlement Agreement.

2. Studies of Interest

Ms. Williams reported that the Intergovernmental Relations Committee of the Governor's Commission on Government Reform and Restructuring met on July 14 and August 4 in Richmond. She indicated that, at the Committee's request, she made a presentation on the assessment and cataloging of mandates at their August 4 meeting. Ms. Williams reported that the full Governor's Commission was meeting at the same time as the Commission on Local Government and that one or more recommendations regarding the mandates assessment process were anticipated. She further indicated that Commission staff would be meeting with Department of Planning and Budget staff on September 15 to discuss potential changes to the assessment process.

Ms. Williams indicated that the Joint Subcommittee Studying Development and Land Use Tools, which was extended by the General Assembly for another year, has no meetings scheduled at this time.

3. Staff Activities

Ms. Williams indicated that Commission staff will attend the Certified Planning Commissioners' Program sponsored by PlanVirginia on September 16 and 17 in Richmond; a meeting of the Interagency Coordinated Transportation Council on September 20 in Richmond; and the VML Annual Conference on October 4 and 5 in Hampton. In addition, by September 30, staff will complete the biennial report to the Governor and General Assembly on Virginia's Planning District Commissions (PDCs).

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E. Conflict of Interests (COI) Act Training

Ms. Williams introduced Tod Love, DHCD's Applications Manager, and thanked him for enabling the members to complete their Conflict of Interests (COI) Act Training on-line immediately after the meeting.

III. 2010 Catalog of State and Federal Mandates on Local Governments

Mr. Robbins gave a brief background and history of the catalog, and explained that since 1993, the General Assembly has charged the Commission with compiling the annual Catalog of State and Federal Mandates on Local Governments. The last catalog, issued in November 2009, included mandates through the 2009 General Assembly session. The current edition includes all new mandates from the 2010 General Assembly session, previously unidentified mandates, changes to existing mandates, as well as a few changes to strictly federal mandates.

Mr. Robbins stated that Executive Order 58 (2007) defines a mandate as 'a state or federal constitutional, statutory, or administrative action that places a requirement on local governments' The Order further divides these mandates into four categories: Compulsory Orders, Conditions of Financial Aid, Regulation of Optional Activities, and State fiscal preemption. He further explained that State fiscal preemption results in a net reduction of revenues collected by a locality or restricts a locality's authority to collect such revenue – such as exempting a class of property from tax assessment, or limiting increases in real estate assessments. Currently, no mandates from this category are included in the catalog.

Mr. Robbins then explained the components of the catalog. Part A of the catalog lists mandates overseen by state executive branch agencies. Each listing has a title, ID

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number, description, including the type of mandate, responsible state agency and secretariat, and citation for the legal authority for the mandate. Finally, mandate assessment data, including the scheduling information, and the finding of the last assessment. The mandates in Part A are subject to the assessment procedure outlined in Executive Order 58.

Part B contains mandates that are overseen by legislative branch, judicial branch, and independent agencies, as well as those that are not overseen by any particular agency. Localities are required to follow these regulations, however there is no state agency providing oversight of the specific mandate. One example would be that a locality must provide a Board of Zoning Appeals if it has adopted a Zoning Ordinance. The mandates in Part B are not subject to agency assessment.

Finally, the catalog is composed of six appendices:

Appendix A – Executive Order 58 (2007)

Appendix B - Schedule for the FY 2010-2011 assessments.

Appendix C – Changes made since last edition of the catalog.

Appendix D – Lists the principal Federal mandates separately. Many of these are actually repeated throughout Parts A and B.

Appendix E - A table summarizing the number of mandates by type and agency.

Appendix F – The statutes in the Code of VA that apply to mandates.

Mr. Robbins then explained the process for updating the 2010 edition of the catalog. Beginning in March 2010, he reviewed adopted 2010 legislation and identified new mandates as well as alterations and expansions of others. He then requested all state

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executive and non-executive agencies to review the proposed changes and to identify any items not noted by the Commission staff. Only one agency, VITA, failed to respond to the request.

As a result of this year's catalog update process, there are 597 mandates in new edition of the catalog, compared to 570 from the 2009 edition, 470 of which are subject to review by executive agencies, up from 456 in the 2009 edition. The other 127 entries are subject to non-executive agency oversight or no state oversight at all, up from 114 in the 2009 edition.

Mr. Robbins then explained changes to the statutes affecting mandates that are included in Appendix F. First, Gubernatorial Suspension of Mandates was amended to allow the Governor to grant two year suspensions from mandates between July 1, 2010 and July 1, 2012. Previously, only one year suspensions had been permitted. He further noted that Commission staff has not been aware that any locality has ever attempted to have a mandate suspended. Also, he noted that the requirement that bills affecting local government expenditures and revenues be filed on or before the first day of General Assembly has been removed.

Mr. Robbins then noted two formatting changes to the catalog: the reduction of excess blank space in the catalog – reducing the size of the catalog by 44 pages, despite containing 27 more mandates, and that the order of the entries has been amended so that they are now sorted by catalog entry code. The prior method of sorting was by agency name, which was found to be confusing. This new method also results in the mandates being grouped together by Secretariat.

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Mr. Robbins then reviewed the changes noted in Appendix C of the draft catalog, including: (1) new mandates resulting from new legislation, (2) newly identified mandates that were enacted in prior years, yet were not included in the catalog, (3) expanded mandates, which are mandates that were significantly altered or expanded during the past year, thus potentially requiring reassessment by the administering agency, and (4) mandates that were eliminated from the catalog. Mr. Robbins noted that there were several other minor changes that were noted under “Other Changes.”

Mr. Robbins stated that several agencies requested that certain mandates be removed or not added to the catalog. Upon reviewing these requests, staff did not concur with the requesting agency regarding seven catalog entries and requested Commission action. These catalog entries were:

SCT.DPOR002 (Water and Wastewater Works Operators License) and
SCT.DPOR003 (Waste Management Facility Operators License. The Department of Professional and Occupation Regulation (DPOR) requested that this mandated be eliminated from the catalog. DPOR’s reasoning was that the mandate applied to the population at-large, not just local governments. Mr. Robbins recommended that, while the mandate applies to the general population, it should still be included since these mandates apply to facilities that are most often owned and operated local governments rather than private entities.

SHHR.DBDHS008 (Human Research). Department of Behavioral Health and Developmental Services (DBHDS) staff requested that this mandate be eliminated from the catalog because the agency regulations were changed to no longer

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require certification for Community Service Boards and Behavioral Health Authorities to conduct human research. Mr. Robbins clarified that the regulations had only been modified by the agency, not eliminated; therefore, staff recommended altering the entry as follows:

Community services boards seeking to conduct or sponsor human research must ~~be certified by~~ comply with the Department of Behavioral Health and Developmental Service's regulations regarding human research, including utilization of a research review committee.

SHHR.DSS057 (AmeriCorps Grant). The Department of Social Services requested that this mandate be eliminated from the catalog on the basis that the locality is not required to apply for the grant. Mr. Robbins reiterated that EO 58 states that the catalog is to include conditions of financial aid such as this, and he recommended that the mandate remain in the catalog.

SHHR.DSS068 (State/Local Hospitalization Program Eligibility). The Department of Social Services (DSS) requested that this mandate be removed from the catalog due to the fact that this program has not been funded in several years. Mr. Robbins recommended that the mandate be retained in the Catalog until such time as the statute that authorized the program is eliminated. He further stated that a note regarding the lack of funding could be added to the entry.

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STO.VDOT031 (Load and Resistance Factor Bridge Design) VDOT requested that this mandate be eliminated from the catalog because most of the costs associated with the mandate are handled by VDOT and the mandate imposes a negligible burden upon the locality. Mr. Robbins recommended that the entry should remain, as the catalog is intended to include all mandates, regardless of funding or magnitude.

SPS.DCJS030 (Domestic and Sexual Assault Policies). This newly identified mandate requires law enforcement agencies to establish arrest policies and procedures for domestic violence and family abuse cases. The policy must establish guidance regarding training, and assistance offered to the victims. The Department of Criminal Justice Services (DCJS) requested that this newly identified mandate not be added to the catalog, as DCJS does not have responsibility for enforcing the mandate. Mr. Robbins suggested that DCJS is charged by § 9.1-102 (36) to set training standards, prepare model ordinances for localities, and report on the implementation of such to the General Assembly, and as such should have oversight with regard to this mandate.

After a brief discussion, on a motion by Ms. Lawson, seconded by Ms. Wingo, the members unanimously accepted staff's recommendations regarding the seven mandates described by Mr. Robbins, and approved the draft 2010 edition of the catalog as presented.

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Ms. Williams then commended Mr. Robbins for his excellent work on the catalog and for completing it two months ahead of the usual schedule.

IV. Fiscal Stress Report for 2008/2009

No update on the Fiscal Stress Report for 2008/2009 was provided; however, Mr. Ziony indicated that Scott County still has not submitted its Comparative Report transmittal file, which is necessary for the computation of fiscal stress and was due to the Auditor of Public Accounts on November 30, 2009. The Commission had previously directed Mr. Ziony to prepare a letter regarding this matter to the Chairman of the Scott County Board of Supervisors for their signature if the county had not submitted the file by their September regular meeting. A letter addressing the matter was presented and signed by each of the members present at the meeting.

V. Initial Survey of Urban Development Area (UDA) Designations in Comprehensive Plans

Ms. Williams reminded members of the key dates for those local governments currently required to do so to designate urban development areas (UDAs) in their comprehensive plans – July 1, 2011 for counties and July 1, 2012 for cities and towns. Ms. Williams indicated that, while the Commission’s initial report on localities’ compliance with the statute is anticipated by October 1, 2011, a baseline survey was distributed on August 17, 2010 to all 95 counties, 39 cities and 190 towns in Virginia in order to determine which localities have already complied with the UDA statute and/or designated UDAs and to ascertain what other localities’ intentions are with respect to UDAs.

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She noted that a copy of the single-question survey was included in members meeting packages. Ms. Williams stated that the survey deadline was September 10 and that, out of 324 total localities, 188 responded on-line, while an additional 11 either faxed or mailed their completed surveys, for a response rate of 61.4 percent. She further indicated that the survey results will be presented at the next Commission meeting.

Ms. Williams reported that the survey generated dozens of telephone calls and email messages from localities around the Commonwealth regarding UDAs, comprehensive plans and the new UDA reporting requirements. She also reported that a number of jurisdictions submitted information regarding their UDAs, as required by the statute.

VI. Scheduling of Regular Meetings

The Commission confirmed that its next regular meeting is scheduled to take place on Monday, November 15, 2010 at 3:00 p.m. at a location to be announced in Hillsville, Virginia. The following regular meeting of the Commission is tentatively scheduled to take place on Monday, January 10, 2010 at the Virginia Housing Center in Glen Allen, provided that space is available.

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VII. Adjournment

There being no further business to come before the Commission, on motion by Mrs. Seefeldt that was seconded by Mrs. Lawson, the meeting was adjourned at 12:36 p.m.

Harold H. Bannister, Jr.
Chairman

Susan B. Williams
Local Government Policy Manager